

RD AN No. 3527 (1965-E)
March 24, 2000

TO: State Directors
Rural Development

ATTENTION: Multi-Family Housing Directors and Coordinators

FROM: James C. Kearney (Signed by James C. Kearney)
Administrator
Rural Housing Service

SUBJECT: Revised Reporting, Authorization and Acceleration Requirements
Related to MFH Preservation Related Activities

PURPOSE/INTENDED OUTCOME:

To help standardize decision making during the prepayment process for Multi-Family Housing (MFH) projects, the Office of Rental Housing Preservation (ORHP) has updated the process for reporting information and receiving authorization for incentives. This Administrative Notice (AN) clarifies RD Instruction 1965-E and revises Guide Letter 1965-E-1. In addition, this AN discusses the Agency's responsibility to consider the impact of acceleration actions on preservation, introduces the concept of third-party equity loans, and provides guidance on making general incentive offers.

COMPARISON WITH PREVIOUS AN:

This AN updates guidance presented in RD AN No. 3460, dated March 29, 1999, and RD AN No. 3435, dated November 20, 1998.

IMPLEMENTATION RESPONSIBILITIES:

1. Revised reporting requirements.

Revised Guide Letter 1965-E-1 (attached) is to be faxed or mailed to Multi-Family Housing Portfolio Management Division, Attention: ORHP, when:

- State Office receives a prepayment request.
- State Office requests ORHP concurrence with an incentive offer.
- State Office needs National Office authorization of incentives accepted by a borrower.

EXPIRATION DATE: February 28, 2001

FILING INSTRUCTIONS:
Preceding RD
Instruction 1965-E

- State Office receives notice that a borrower has rejected an incentive offer.
- State Office is ready to process a transfer to a nonprofit or public body.
- ORHP should remove a prepayment request from the list.

Provide all attachments to ORHP as specified on revised Guide Letter 1965-E-1. RD Instruction 1965-E, section 1965.214 (e) requires the National Office to authorize all specific incentive offers, including those that do not consist of RHS equity loans or Rental Assistance. To assure consistency in decision making, State offices are to consult with ORHP prior to making any specific incentive offers and should use the RHS MFH Incentive Calculation Worksheet to assist in developing the offer. However, incentive offers are to be determined individually and will not necessarily be based on worksheet calculations. The newest version of the Incentive Calculation Worksheet has been posted on the intranet at <http://rdintra.usda.gov> in the RHS Document Library under the name MFH Incentive Calculation Worksheet.

Note that National office authorization is not required for the issuance of general incentive offers. General incentive offers are discussed in detail in section 4 of this AN.

2. Considering the impact of acceleration actions on preservation.

When the State office is considering acceleration of a project loan, the problem case review should also consider the possibility that the borrower is forcing an acceleration to circumvent the prepayment process established by RD Instruction 1965-E. The review should consider the strength of the local housing market and the potential for conversion to conventional housing. If this is found to be a possible motivation, the State office should work with the Office of the General Counsel (OGC) to determine if there are alternatives to acceleration, such as suing for specific performance under loan and management documents.

3. Third-party equity loans in conjunction with preservation.

RHS debt may be subordinated to allow for third-party equity loans in accordance with the provisions of RD Instruction 1965-B, section 1965.79. Third-party equity loans may also be in the form of junior liens established in accordance with section 1965.83. Tax-exempt bonds are an acceptable form of third-party equity.

Determination of the amount of any third-party equity loan will be in accordance with the general process established for determining Agency equity loans. This process requires the use of an appraisal acceptable to the Agency, rents that do not exceed comparable unsubsidized market rents, and a loan amount not to exceed 90 percent of equity. RD Instruction 1965-B, section 1965.79 (b)(2), authorizes subordination only when it furthers the objectives of the Multi-Family Housing program. Therefore, the State Director or National office may consider imposing a 20-year use restriction in exchange for granting the subordination in order to further the MFH program objective of providing low-cost housing to as many eligible tenants as possible. Likewise, the National office, pursuant to RD Instruction 1965-B, section 1965.83(b)(8), may consider adding a 20-year use restriction as a part of its case-by-case review for authorizing junior liens.

State Directors should contact ORHP to request National office authorization to use a third-party equity loan and either subordinate RHS debt or accept a junior lien. When additional RA is being provided in conjunction with a third-party equity loan, National office approval will be subject to the availability of RA.

4. General incentive offers.

RD Instruction 1965-E, section 1965.213 and the Housing Act of 1949 require the Agency to offer an incentive to extend the restrictive-use when a borrower is eligible to receive incentives. If preliminary discussions with a borrower indicate that the borrower has no interest in receiving incentives to stay in the program, a general incentive offer may be made without the use of an appraisal. Note that ORHP concurrence is no longer required to issue a general incentive offer.

The general incentive offer should reference RD Instruction 1965-E, paragraph 1965.213(d), and list all of the incentives available including equity loans, rental assistance, increased return on investment, excess section 8 rents, and conversion to or modification of interest credit. The general incentive offer notice must inform the borrower that a specific incentive offer will be provided at the borrower's request. Attached is an example of a general incentive offer letter.

If the borrower indicates in writing to the Agency that he or she would consider a specific incentive offer, a specific offer must be fully developed in accordance with RD Instruction 1965-E, using an appraisal. All appraisals will be developed using an "as is" market value of the property as unsubsidized conventional rental housing.

If the borrower rejects the general incentive offer, the Agency will proceed to the next steps under section 1965.215 of RD Instruction 1965-E.

Attached to this AN is an advance copy of the revised Guide Letter. The official version of the Guide Letter will be issued separately on a Procedure Notice. Also attached is an example of a general offer letter. If you have any questions, please contact ORHP at (202) 720-1611 or (202) 720-1940.

Attachments

RD Guide Letter 1965-E-1

PROCEDURE REFERENCE: RD Instruction 1965-E.

PURPOSE : Notification to National office of status of prepayment requests.

SUBJECT: Status of Prepayment Request (Guide Letter 1965-E-1)

TO: Office of Rental Housing Preservation (ORHP)

E-MAIL: mswirey@rdmail.rural.usda.gov, cfoxwort@rdmail.rural.usda.gov,
ctietke@rdmail.usda.gov, or landers@rdmail.rural.usda.gov (please e-mail at least one person and CC at least one person on this list)

FROM:

Project Name:	_____	State:	_____
Bor. ID and Proj. #:	_____	Family or Elderly:	_____
Borrower Name:	_____	RRH or LH:	_____
Project Location:	_____	Number of Apt. Units:	_____
	_____	Number of RA Units:	_____
	_____	Number of Sec.8 Units:	_____
		Project Type:	_____
		Expiration Date of Current Restrictions:	_____

ACTION: __ Place on list: Date (__/__/__) Time (_____)

ACTION: __ Request ORHP Concurrence with Incentive Offer Date (__/__/__)
(E-mail Incentive Calculation Worksheet to ORHP)

ACTION: __ ORHP Concurrence with Incentive Offer Date (__/__/__)

ACTION: __ Request ORHP authorization of incentives accepted Date (__/__/__)
(Attach memorandums of offer and acceptance)
Restriction of Exhibit A-1 signed __

ACTION: __ Request ORHP Concurrence with Prepayment Acceptance Date (__/__/__)
(Attach Exhibit B to RD Instruction 1965-E)

Restrictions to be provided:

Exhibit A-2 __

Exhibits A-3 and G-1 __

Exhibits A-4 paragraph A and G-2 __

Exhibits A-4 paragraph B and G-3 __

Exhibits A-4 paragraph C and G-4 __

Restrictions not to be required (check all that apply below) __

Non-program property __

Minorities not materially affected __

Tenants not displaced __

Adequate, safe, decent and affordable housing available __

For 79-89 properties only:

Borrower declined ____/accepted____ Rural Development request
that property be maintained as affordable housing for an additional 20
years.

Date of acceptance/rejection_____

ACTION: __ ORHP Concurrence with Prepayment Acceptance Date (__/__/__)

ACTION: ☐ **Bor. rejected incentive and offered to nonprofit/public body** **Date** (___/___/___)
(If rejection will result in prepayment, request ORHP concurrence above)

ACTION: ☐ **Ready to process transfer to a nonprofit or public body** **Date** (___/___/___)
(Attach a description of advances, grants or RA needed)

ACTION: ☐ **Remove from list** **Date** (___/___/___)
Request withdrawn: ☐
No ability to prepay: ☐
Other: ☐ (Explain using separate attachment)

Mr. Walter Grimes
Housing Authority of the City of Vale
P.O. Box XX
Vale, AR YYYYYY-YYYY

Dear Mr. Grimes:

This letter is to notify you that in response to your request to prepay your multi-family housing loans, USDA Rural Development is prepared to develop an incentive offer that would include the incentives found in RD Instruction 1965-E, section 1965.213. Possible incentives include:

- An equity loan,
- Rental Assistance,
- An increased annual return on investment,
- Excess section 8 rents, or
- Conversion or modification of interest credit.

If you accept this incentive offer, you will be required to execute a "Restrictive-Use Agreement" that will obligate you and any successors in title to restricting the use of your housing to very-low-, low-, and moderate-income tenants for a period of 20 years from the date the incentives are closed. This incentive package is a one-time offer. If you accept this general offer, a specific incentive offer will be developed for you.

You have until _____, ____ [30 days from the date of this letter], to accept or reject this offer in writing. If you do not respond in writing, either by accepting or rejecting this offer, we will consider your request for prepayment concluded and the offer will be considered withdrawn without additional notification.

If you reject the incentive offer, Rural Development will make a determination of the need for affordable housing in the area your housing serves and of the impact of prepayment on your tenants and the local market. Depending on the outcome of that determination, you may be (1) required to sell your project to a non-profit organization, (2) permitted to prepay with use restrictions, or (3) permitted to prepay without further use restrictions.

Consider this offer carefully, and if you have any questions, please call my office.

Sincerely,

LESTER J. BUCK
Rural Development Director